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Before the
Federal Communications Commission MAR - 8 1993
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In the Matter of	)	
	)	
Implementation of Sections of the	)	MM Docket No. 92-266
Cable Television Consumer	)	
Protection and Competition	)	
Act of 1992	)	
	)	
Rate Regulation	)	

TO: The Commission

FURTHER COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS

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The National Association of Broadcasters ("NAB")[1] submits these comments on

the Commission's release of a database compiled from responses to the Cable TV

System Operators Rate Structure Questionnaire that was mailed to cable operators in

late December 1992.

Introduction

As demonstrated by NAB in its Comments and Reply Comments in the above

captioned proceeding, the Commission can best achieve Congress' objectives of

establishing an efficient mechanism to extract the monopoly rents currently included in

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[1] NAB is a nonprofit, incorporate association of radio and television stations and
networks which servers and represents the American broadcast industry.

most cable rates by adopting a hybrid benchmark model for regulating basic tier cable rates.[2] Included in NAB's Comments were the details of this model, as developed by Strategic Policy Research ("SPR"). Other proposals based on the use of present rates, pre-deregulation rates and apparently competitive rates, all have inherent flaws and shortcomings.

NAB continues to believe that the model presented in our Comments is the most economically efficient and patently fair system for regulating the basic tier of cable service. As noted in the SPR study:[3]

> Attempts to map or extrapolate rates from a sparse sample will be prone to error. Unless the full range of diverse circumstances in monopoly markets is covered in a competitive sample, estimation of competitive rates will entail statistically invalid extrapolations beyond the bound from within which sample observations are drawn. To the extent that there are sample deficiencies and significant cost and service differences exist[ing] among different types of systems (*viz.,* large versus small channel capacity, aerial versus buried plant, multiple-system versus independent ownership, vertically integrated versus nonvertically integrated corporate organization, etc.), estimates of competitive rates will be biased.

Having now had an opportunity to conduct a preliminary review of the Commission's database on cable television rates, our fears with respect to the use of a rate benchmark have been reinforced. Even with the Commission's best efforts, the

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[2] Haring, John, Jeffrey H. Rohlfs and Harry M. Shooshan III, "Efficient Regulation of Basic-Tier Cable Rates," NAB Comments in MM Docket No. 92-266, Appendix A.

[3] Ibid., at pp. 5-6.

data as collected are but a quagmire of numbers which can be subject to varying and inconsistent analyses and interpretations. The classes of problems and challenges inherent to the survey process and data thereby obtained range from issues of weighting, statistical generalizability, imprecision in the definition and measurement of variables, availability of data, and the assignment and comparability of statistical groupings.

In fact, the underlying complexity, ambiguity, and imprecision of the data contained in the database confirm our expectation that any rate-based benchmarks will necessarily be not only error-prone, but arbitrary and capricious. This is due not just to infirmities inherent to the survey methodology, but also to the very nature of the cable industry. A great inconsistency and wide variety exists in the composition of tiers, and pricing strategies. Additionally, the dynamic nature of the cable industry makes a rate-based benchmark all too complicated and unfair. Finally, we might again note that even if the data were rich enough to provide some type of benchmark, the rate-based benchmark approach remains subject to gaming by cable operators seeking to maximize their returns.

The FCC Cable TV Rate Survey

The FCC survey design attempted to collect data from cable systems in different competitive circumstances for the prime purpose of comparing services and prices. The sample of cable systems selected for study included groups (as defined by

the FCC) consisting of: (a) cable systems likely to be operating in competitive markets; (b) a random sample of cable system community units; and (c) large systems. The idea of specifically selecting large systems was to overcome an anticipated problem that only a small number of large systems are likely to appear in a random sample.[4]

As executed, the FCC survey sampling procedure yielded cases from four predesignated groups of systems: Random, Overbuild, Small, and Top 100 systems. The survey methodology required cable systems which served more than one franchise area to provide additional information. Depending on the characteristics of the system, respondents to the questionnaire were directed to complete schedules 9-13 of the questionnaire on different kinds of "second franchise areas." The procedure for this is described in the "Explanatory Notes" documentation which accompanies the database.[5]

The case count for these four groups is ambiguous since the FCC did not propose a mutually exclusive and exhaustive categorization scheme. There are responses from 687 cable system units, according to FCC analysis reported in its explanatory materials.[6] In addition to information coded for the 687 cases of first

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[4] See *Notice* at para. 3.

[5] See *Notice* at Appendix ("Respondents Guide to Cable TV System Operators Rate Structure Questionnaire"), pp. 7-9.

[6] *FCC Cable TV Rate Survey Database: Structure of Database and Explanatory Notes*, February 24, 1993, at 1.

franchise areas, an additional 420 cases were created in the database corresponding to the subset of cable systems which provided information on a "second" franchise area within their system. Thus, the total case count, according to the FCC, is 1107.

Another type of grouping developed by the FCC was based not on sampling strategy, but on the pattern of responses to the questionnaire and in follow-up research. Based upon the FCC's own determinations, cases were further assigned to one of five groups: Types A, B or C (for the type of effective competition), N (for no effective competition) and NB (for some competition, but unlikely to meet the legislative definition).[7]

Conducting and Interpreting Statistical Analyses of the Cable Television Rate Database

While for the reasons stated above, NAB concludes that the survey data are not constructive to the instant proceeding, we do offer cautions for those, including the Commission, who do conduct and interpret their own analyses of the data.

First, and foremost, we note that the random sample component of the study is comprised of *only 293 cases* (note that this excludes the second franchise area, which we do not find to be randomly selected). It is very ambitious to expect conclusive data from such a small sample given the inherent variability of what is being

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[7] *see*: "Explanatory Notes," at p. 2.

measured.

Furthermore, any statistical comparisons which are made should be constrained to specific groups with specific membership definitions. For this reason, analyses should be constrained to a consideration of only the cases comprising the first franchise areas and only among differences with the first tier of service. There is too much ambiguity and imprecision in the definition of "second franchise area" group membership and in determining the make-up of second and third tiers of service.

In other words, the second franchise area cases do not comprise a single group because they do not appear to be homogeneous on any essential characteristic which is required for further statistical analysis. The resulting data are too arbitrary and variable in make-up to bear any fruitful analysis. Homogeneity on some relevant characteristic is a minimum requirement for group membership in statistical analysis.

Beyond the issue of franchise areas, the most proper comparisons are among the "Random," "Overbuild," "Small" and "Top 100" franchise areas. The groups should be assembled in statistical analyses as defined by the FCC in its original sampling procedure. One relevant caveat is that the four groups do not have exclusive definitions. In other words, a particular case may meet the definition for more than one group.

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In the "random sample" there was one instance of an overbuild, three instances of small systems and two instances of top 100 systems. The Random group cases correspond to the responses from the originally designated random sample. While the FCC reports the overall response rate at 91.8%, it does not separately report the response rate for the predesignated random sample. There are 293 cases which belong to the "Random Sample, First Franchise Area" group.

All first franchise area cases which were randomly selected should be assigned to the Random sample group *and only to that group*. This is the only intact group with a precise and unambiguous definition because these cases were enumerated and predesignated and share the essential characteristic of random selection. The cases other than those from the predesignated random sample can be assigned on a non-exclusive basis to the remaining three groups.

Therefore, cases could be assigned to one, two or all three of the remaining groups (Overbuild, Small or Top 100). This procedure for group assignment should be pursued since there is no justifiable rationale for excluding cases selected on a non-random basis and sharing the characteristic which defined group membership.

Once having struggled through the process of deciding which subset of cases to analyze (i.e., First Franchise Area cases), and then their group membership (i.e., Random, Overbuild, Small or Top 100), the next procedure is to determine which

data are comparable among these groups. Issues to resolve include the comparability of various tiers and trend data (1992 versus 1986). It is not necessarily the cases that all systems have data for all three tiers or for both years. This affects the relative weighting and generalizability of the data.

Since the composition of each "tier" of service is determined individually by the individual cable systems using their own criteria, it cannot be expected that tiers are always comparable across cable systems. Among other things, the FCC's definition of "tier" does not exclude the possibility that one or more of these "tiers" might be pay tiers and not basic tiers. Thus, any "tier-to-tier" comparison is necessarily an error-prone process from a measurement and statistical analysis perspective.

Cable systems with more than one tier of service might begin their pay tier options with the FCC defined "tier 2" or "tier 3" of service. For the instant proceeding it is not productive to combine analyses of basic with pay tiers of service. There is no real world commonality among the three levels of tiered service considered by the FCC, other than properties related to price and number of subscribers. Additionally, cases have an unequal weight when considering second and third tiers of service, since not all systems have all tiers. This is cause for insufficient precision for making informed comparisons among systems' tiers.

Finally, use of the data on prices and channels without specification of the types of programming on those channels is both misleading and dangerous. Certain cable systems may be offering many channels (with various costs and prices associated with them) with little value to consumers on some tiers. This is precisely the problem NAB identified when discussing the opportunities for gaming by cable systems under a rate-based regulation scheme. This is especially a problem as many cable systems have retiered their channel line-ups.
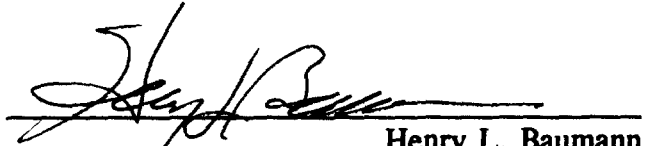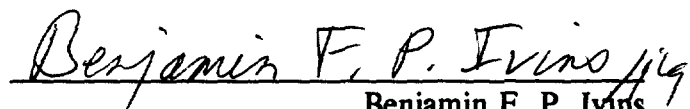
Conclusion

The survey data produced by the Commission as part of this proceeding confirm the impracticability of using any rate-based benchmark approach to cable television basic rate regulation. Inherent defects which arise not only from the survey methodology itself, but from the very structure of the cable industry itself cannot be overcome. These defects include, among other things, the relative imprecision of the measurements, the ambiguous and non-exclusive definitions of groups, the lack of randomness in sample elements, problems with weighting cases and lack of homogeneity within groups and measures on essential characteristics make the survey data problematic at best. Accordingly, attempts at extensive analysis and interpretation of the data would, at best, serve no useful purpose and, could, at worst, result in misleading or spurious conclusions.

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Respectfully Submitted,

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